Licence Agreement

Between

Portunity GmbH
Am Gaswerk 13
D-42477 Radevormwald
Germany

(Also called „Licenser“, „Portunity“, „Manufacturer“ and „Supplier“ in the following)

and the

User who installs and operates the Portalsuite 2002

(Also called „Licensee“, „Customer“ and „User“ in the following)

about the Terms of Use and the use of the „Portunity Portalsuite 2002“.

§1 Installation, Activation of Advanced Versions and „Key“ Handling

1) The user is entitled to install the Portalsuite 2002 onto his own servers and to use the Portalsuite 2002 in its so-called „Light Version“, as explained below, and to apply so-called „Light portals“. The Light version is the smallest, accessible exempt from charges stage, the entry into the Portalsuite 2002 product line.
2) You need a registration key to install and use the Portalsuite 2002. The registration key is transmitted per e-mail after fulfilled online registration and has to be stored in the Portalsuite 2002. The acquired address and contact data (name, street, city, country, phone, fax, internet and e-mail address) of the user as well as a serial number is encoded in the registration key.
3) After activation of the Portalsuite 2002 with the registration key a so-called server key is generated by the Portalsuite on the basis of the stored registration key and server-specific properties (a. o. the type of operating system and the IP address is used). Any transmission of data files, configuration data or server configuration files does not take place.
4) So-called licence keys are available in the online shop or at official Portunity Portalsuite retailers on the basis of a monthly rental fee, alternatively as well as a purchase version. The licence keys can be stored in the Portalsuite 2002 for activation of „Light Plus“, „Advanced“, „Advanced Plus“, „Enterprise“ and „Enterprise Plus“ versions. Depending on the respective version further features and functions are activated corresponding to the official Portalsuite 2002 functionality specification. The server key, which is generated in the Portalsuite 2002, is needed to generate the licence keys. Therewith the licence keys are adjusted to the user’s installation configuration and avoid a multiple use of the licence keys.

§2 Licence Terms of Software Use

1) According to state of the art it is impossible to create software which works error-free in all applications and combinations. Therefore subject of the contract is the use of a software which is protected by copyright and which is basically useful according to the programme description and the user manual.
2) Through this licence of use the licenser firstly concedes a personal, non-exclusive right of use during the term of contract, which is transferable with the licenser’s consent only. The licensee is entitled to install the Portalsuite 2002, to apply, operate and publish one or several websites resp. portals with the Light version, as well as to purchase licence keys for activating advanced versions and functions for his own use in the Portunity online shop or at authorised retailers.
3) Any acquirement of rights on the software itself is excluded from this licence. All rights on the software remain at the licenser, especially all rights of publishing, copying, editing and utilisation.
4) The rights on the trade marks „Portunity“, „Portalsuite“ and „EasyBuilder“ are accepted and remain at Portunity.
5) The user is allowed to practise the right of use, which is granted in this contract, regarding the advanced versions only after complete payment of the licence fee.
6) The use of the software is limited to the free Light version resp. to the number of licensed websites resp. portals and modules.
7) Normally the use of the software takes place web-based via internet on your own or on a rented server. Any cession of rented server capacities or dedicated servers is not part of this licence agreement.
8) The software is ceded to the licensee as object code. The cession of the source code and related technical programme documentations is not obligatory and is not part of this cession and this licence agreement. There is no right of access to the source code. The right of use is limited to the object code.
9) The right of use for previous versions expires after an executed installation of a new programme version. So, after the installation of an update, you are able and allowed to work with the latest programme version only.

10) The licensee is interdicted to decompile and to decode the software, registration, server and licence keys as well as to ulterior evaluate them, also not for the purpose of debugging.
11) If Portunity provides temporary demo or test keys of advanced Portalsuite versions and modules the websites and portals activated in this way may be used for testing only. An activation, publishing and operation of websites and portals which are operated with test keys is strictly interdicted and is prosecuted by criminal and civil law.
12) The licensee is liable for all damages due to infringement of copyright.
13) For the rest the provisions of copyright remain unaffected.
14) Information contained in brochures, advertisements, documentations and on our website are not considered to be an assurance of properties. Assurance of properties does exclusively take place in written form in the functionality specification which is part of the licence and the contract.

§3 Term of Contract / Termination

1) The licence agreement is concluded indefinitely and expires through a complete and residue-free uninstallation of the Portalsuite 2002 and permanent deletion of all files and data.
2) The licenser can only terminate the agreement for a good cause. Such a good cause is shown, if the licensee does not fulfil his contractual obligations or does not pay amount dues despite dunning within ten days after receipt of the dunning. (The licenser reserves to himself an immediate cut-off in case of delay of payment insofar as the software is hosted on Portunity servers).

§4 Warranty / Maintenance

1) The licenser will fix reported bugs in the programme and in the programme documentation. If such a bug does exist, depends on the properties determined in the functionality specification for the use of the software as provided in the contract. There is existence of a bug especially in case the software does not fulfil its functionality so that the use of the trimmed programme is impossible or is vastly constricted. The licenser will start fixing the bug by all available means after bug report by the licensee.
2) The licenser provides recent programme versions web-based as free download. If the licensee uses the licenser's servers (ASP model), installing updates takes place without costs on the part of the licensee. Alongside the licensee is obliged to inform himself on changes and updates on http://www.portunity.de or on other service web sites announced by the Portunity GmbH regularly. Updates for the licensee's own servers are provided on the service web sites, eventually in areas secured by login, or alternatively per e-mail unless a service update is agreed in an additional service contract.
3) Information on products and services like data on performance and consumption as well as information on usability of devices for existing or upcoming technologies is without engagement. This counts especially for the case of updating changes or improvements which serve technical progress. Minor changes of such measures describing products or services are considered to be approved and do not affect the fulfilment of contracts, unless they are unreasonable to the customer.
4) Further warranty claims are excluded.
5) If the examination of a fault notification proves that there is no case of warranty, the costs caused by the examination are charged according to time effort.

§5 Use of Customer Data

1) The licenser authorises the licensee to process, store and analyse data provided to him in connection with the business relation in terms of the German Data Protection Act (§ 28 GDPA).
2) For generating the server keys hardware-sided evaluations of customer's hardware take place automatically. The operation of the Portalsuite 2002 „Light version" is also possible without transmission of the server key. But, the server key is actually obligatory for the generation of the necessary programme keys (licence keys) in the Portunity online shop. The data contained in the server key exclusively serve the generation of the necessary programme keys and are not evaluated farther or even forwarded to third parties by the Portunity GmbH.

§6 Warranty

1) The licenser is only liable for indemnification if the damage is caused by his own gross negligence or intention, or if he violated an essential contractual obligation lightly negligent and thereby compromised the purpose of the contract.
2) Liability for loss of data is limited to the effort of recovery with backup copies.
3) There is no liability for indirect damages, especially no liability for any loss of profit.
4) Warranty is limited to typical, predictable damages and is limited to the maximum of a single licence fee (max. 6 months) respectively - in case of purchase - to the purchase price of the particular licensed versions less a rate for previous use.

5) The licenser warranties that the sold software is not afflicted with bugs, which would annul or vastly depreciate the value or the usability in terms of the suppositional use. The period of warranty is limited to the termtime of the licence keys purchased in the online shop and to – in case of a purchase of software – a maximum of three (3) years ex date of purchase.

6) In case of warranty the licenser is basically legitimated to the repair software. If the licenser rejects the remedy or the remedy is delayed or fails, or the remedy is unreasonable to the licensee in an individual case, the licensee is legitimated of his own choice to demand a reduction of purchase price (lowering) or a cancellation of the contract (redhibition), but under setting-off of the previous period of use.

7) If the licenser did exceptionally ensure properties of the software, of additional materials or of the data carrier in written form, or concealed faults in this objects maliciously, the licenser is obliged to – by the licensee's own choice – compensate for the accrued damage instead of accepting the reduction of purchase price (lowering) or the cancellation of the contract. The compensation is limited to the amount of the sextupled single licence price resp. to the amount of purchase price less a rate for previous use.

§7 Reseller Clause (Valid for Official Licence Dealers Only)

The reseller is explicitly allowed to rent the software to third parties, as far as it runs on servers of the licensee, resp. to pass on licences. The reseller is obliged to provide for the adherence of this agreement and to contractually agree upon the following articles with his contractual partners (»users«):

1) To keep passwords of any kind, provided verbally or written, especially such for the use of services or parts of the Portunity software, secret. In case third parties or organizations acquire knowledge of passwords, resp. there is the suspicion of such knowledge, to alter the passwords resp. to induce the alteration.

2) To conclude corresponding licence agreements with his customers and – especially – to contractually point at the interdiction of de-compilation of software as well as registration, server and licence keys and at the trade mark right regarding the Portunity trade marks „Portunity", „Portalsuite" and „EasyBuilder".

3) To keep chosen passwords in confidence as well as to forward them - in a way that excludes the chance for fourth parties to obtain them - to the respective end user only.

4) To inform Portunity at once in case of suspicion of misusages and unlawful actions and to agree upon further steps together.

5) To forward information on recognizable troubles or information on troubles disclosed by the end user to Portunity immediately after verification and logical consideration.

§8 Final Provisions

1) Place of execution is Radevormwald/Germany.

2) In case the customer is a registered dealer, the exclusive place of jurisdiction for all litigation out off or in connection with this contract is agreed to be Wuppertal/Germany.

3) Supplemental agreements or changes of this contract must be written.

4) The General Terms and Conditions of the Portunity GmbH are considered to be accepted.

5) If a provision of this licence agreement proves legal ineffective, the rest of provisions remains unaffected.

Updated 24/2/2002, Portunity GmbH (Radevormwald, Germany)